

P.W.D., PUBLIC HEALTH BRANCH

The 22nd February, 1968

No. 919-PWIII(2)-68/475.—Consequent upon his promotion on an *ad hoc* basis and temporarily temporary capacity, Shri K. N. Latta assumed charge as Sub-Divisional Engineer, Special Water-supply Rural Public Health Sub-Division 2. His ar with effect from the 26th October, 1967 (noon) relieving Shri Beas Dev, Sub-Divisional Engineer.

No. 915-PWIII(2)-68/4446.—Consequent upon the selection of Shri R. S. Sharma to join the Training School, M. dras under the Capacity Liability Scheme for Engineers/Volunteers, Shri R. S. Sharma, Sub-Divisional Engineer, Karnal, Public Health Sub-Division handed over charge with effect from the 5th January, 1968, afternoon, to Shri R. K. Jain, Sub-Divisional Engineer, Planning, Public Health Sub-Division, Karnal in addition to his own duties.

ISHWAR CHANDRA, Secy.

LABOUR DEPARTMENT

The 17th January, 1968

No. 11384-7 Lab-67/27456.—In exercise of the powers conferred by clause (a) of sub-section (2) of Section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the President of India is pleased to appoint a Committee consisting of the following persons to hold enquiries and advise the Government in fixing the minimum rates of wages in respect of the employment on the construction or maintenance of roads or (i) in building operations and (ii) in stone breaking or stone crushing in the State of Haryana which were fixed, — *vide* Erstwhile Punjab Government Notification No. 1153-3 Lab-II-60/5706, dated the 1st March, 1960.

Nominee who do not represent any interest

1. The Labour Commissioner, Haryana .. Chairman

Employers Representatives

1. The Chief Engineer, Haryana, P.W.D., B. & R. or his representative .. Member

2. Shri M. L. Manchanda, Occupier of M/s M. L. Manchanda & Co., Faridabad .. Do

Employees Representatives

1. Shri Darshan Singh, Secretary, A.I.T.U.C., c/o Faridabad Engineering Workers Union, Faridabad .. Do

2. Shri J. D. Bakshi, Haryana P.W.D. Workers Union, Kali Bari, Ambala Cantt. .. Do

Independent Representative

1. Shri K. L. Poswal, New Colony, Gurgaon .. Do

2. The Committee Shall make its recommendations to Government within six months of the date of publication of this notification in the official Gazette.

3. The headquarters of the Committee shall be at Chandigarh but Chairman can hold meeting at any other places in the State of Haryana if and when considered necessary.

The 23rd February, 1968

No. 1323-3Lab-68/4653.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s. Laldee (P) Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT.

ROHTAK.

Reference No. 51 of 1967
between

The workmen and the management of M/s. Laldee (P) Ltd. Faridabad.

Present :—

Shri Roshan Lal Sharma, for the workmen.
Shri R. C. Sharma, for the management.

AWARD

The Government of Haryana has referred the following Industrial Disputes to this Court for adjudication.—*vide* Government Gazette notification No. 245-SFIII-Lab-67, dated 26th June, 1967 :—

Whether the termination of services of Shri Jumma Khan was justified and in

order? If not, to what relief is he entitled?

The workmen in his claim statement has stated that he was in the service of M/s. Laldee (P) Ltd, Faridabad and the management terminated his services on 19th January, 1967, without a prior notice or giving him any charge-sheet simply because on one particular day he refused to work over time. The management in their written statement have attacked the validity of the order of reference on a number of grounds. It is alleged that the reference is vague and it does not fall within any of the items of the II schedule of the Industrial Disputes Act, and therefore, this Court has no jurisdiction. It is submitted that the number of persons employed by the management in January, 1967 was 149 and now the number of persons employed is 154 and the impact of this reference would affect the other workers as well. It is stated that the Government have failed to display as to how and in what manner they have come to the conclusion that an industrial dispute exists because so far as the management is concerned, they are not aware of any such dispute. The validity of the demand notice on the basis of which the dispute has been referred for adjudication has also

been attacked. It is submitted that this notice has been served by one General Labour Union which is not a union of any particular industry but is enrolls members of any and every industry and this union is not an organisation in a true sense. It is submitted that the union which indulges in such like activities is not a proper union and cannot raise a dispute in any way and in any form against a particular establishment like the present one which is carrying on business of engineering industry. It is, therefore, pleaded that the General Labour Union has no *locus standi* to raise the dispute as the claimant was not even a member of this union which is also not registered.

On merits it is pleaded that the claimant Shri Jumma Khan absented himself from his duties from 19th January, 1967 onwards without permission or getting his leave sanctioned. It is alleged that the management waited for him for a very long period but he did not turn up and the management is given to understand that the claimant has got a better and more gainful employment in M/s. Navyug Industries at Okla, New Delhi, and, therefore, it is presumed that he has left the job of the respondent concern of his own accord. The following preliminary issues which arose from the pleadings of the parties were framed, on 1st September, 1967 :—

- (1) Whether the term of reference are vague ?
- (2) Whether the terms of reference do not fall within any item of the second schedule of the I.D. Act ?
- (3) Whether this Court has no jurisdiction because the number of employees exceed one hundred ?
- (4) Whether the reference is not competent because the Government has failed to display how and in what manner they have come to the conclusion that an industrial dispute exists ?
- (5) Whether the reference is not legal because the General Labour Union is not a union of a particular industry and have no *locus standi* to raise the dispute because the worker Jumma Khan was never a member of this union ?
- (6) Whether the union is registered. During the course of evidence the management also produced evidence on merits and on the request of the learned representative of the management the following two issues on merits were framed on 20th November, 1967:—
- (7) Whether the claimant Shri Jumma Khan absented himself from service with effect from 19th January, 1967 without permission and his services have not been terminated by the management ?
- (8) If the above issues are found against the management to what relief is the claimant entitled ?

I have heard the learned representative of the parties and have gone through the evidence produced by them. My findings are as under :—

Issue No. 1:— The order of reference is said to be vague simply on the ground that it is not mentioned either in the order of reference itself or in the demand notice as to the manner in which the services of the claimant are said to have been terminated.

There is no force in this objection because if the services of the claimant have been terminated as stated by the claimant then the manner in which his services have been terminated must be within the knowledge of the management. In my opinion the reference cannot be rejected on the ground that it is vague. I find this issue is in favour of the claimant.

Issues No. 2 & 3:—

It is submitted that the expression "termination" is a very wide term and under item No. 3 of the second schedule of the Industrial Disputes Act, the Labour Court has jurisdiction to adjudicate upon the dispute only if a workman is discharged or dismissed from service. It is submitted that since the expression "termination" has been used and the manner in which the services of the claimants have been terminated has not been specified and the number of persons in the employment of the respondent are more than 100, therefore, this Court has no jurisdiction. There is no force in these objections. We have already seen that the version of the claimant is that the management have dispensed with his services without any prior notice or giving him any charge-sheet, etc. This means that he has been either discharged or dismissed from service. It cannot, therefore, be said that the subject-matter of the dispute is not covered under item No. 3 of the second schedule and since the other workmen are not effected by this dispute, therefore, this Court has jurisdiction to adjudicate upon the dispute. I find issues No. 2 and 3 also in favour of the claimant.

Issue No. 4:—

The learned representative of the management did not cite any authority in support of the proposition that it is incumbent upon the Government to display in the order of reference as to how and in what manner they have come to the conclusion that an industrial dispute exists. If a workman is aggrieved by reason of the termination of his services then under section 2A of the Industrial Disputes Act, he can raise an industrial dispute even if the other workmen or the union does not espouse his cause. Since the claimant is aggrieved by reason of his dismissal or discharge from service, he has raised this dispute and the Government was competent to refer the dispute to this Court for adjudication and the reference cannot be said to be illegal.

Issue No. 5 & 6:—

The validity of the reference is also attacked on the ground that the dispute has been raised by the General Labour Union which is not a union of the workmen employed in the respondent company and it is not registered. There is no force in these objections also because as already pointed out, under section 2A of the Industrial Disputes Act the aggrieved workmen himself can raise an industrial dispute even if the other workmen or the union has not espoused his cause. There is no denying the fact that the claimant is aggrieved by reason of his dismissal or discharge from service and the reference can not be said to be illegal because the General Labour Union which is not a union of the workmen of the respondent concern gave a demand notice on behalf of the aggrieved workman. The learned representative of the management has not cited any authority in support of the proposition that the order of reference must be struck down if it has not been made directly at the instance of the aggrieved workman himself or by a union of the establishment in which he is employed.

As regards the objection that the General Labour Union is not registered Shri Kasturi

Lal, M.W. 1 has stated that the General Labour Union is duly registered in the office of the Labour Commissioner, Haryana and its registration has not been cancelled so far. He has only stated that in the constitution of the union it has not been specified the industry in which the person should be working before he is entitled to become a member of the union. If under the law such a union cannot be registered then an objection should be raised in the office of the Labour Commissioner for cancellation of the registration of the union. The management is not competent to challenge in this Court, the action of the Labour Commissioner registering the General Labour Union because it is not a union of any particular industry and it enrols members employed in any and every industry. The claimant has stated that he is a member of the General Labour Union which is duly registered. The dispute regarding the alleged wrongful termination of the services has been raised on behalf of the claimant. I, therefore, find these issues also in favour of the claimant.

Issues No. 7 & 8—

Shri O. P. Bakshi, M.W. 2, has appeared on behalf of the management. He brought the attendance register and stated on the basis of the entries in the register that the claimant Shri Jumma Khan was marked absent from 19th January, 1967 onwards and his name continued to appear in the register up to 31st March, 1967. The witness could not possibly have any personal knowledge of this case because he has stated in the cross-examination that he joined the respondent company only on 1st April, 1967. The persons who actually marked the attendance in the attendance register has not been produced for the reason best known to the management. On the evidence of Shri O. P. Bakshi who has no personal knowledge of the case, it is not possible to hold that the claimant has been absenting himself from service from 19th January, 1967 onwards without permission of the management. The claimant has appeared as his own witness and has affirmed on oath that he never absented from duty and his services have been terminated by the management. He says that he had fever on the day his services were terminated and Shri Kailash Babu asked him to work over-time for 4 hours but he told him that since he was not well he could not work over-time at which Shri Kailash Babu gave him filthy abuses and asked the Chowkidar not to permit him to enter the gate. The claimant says that he went to the factory again but Kailash Babu told the Chowkidar to send him away otherwise he would be brought inside the factory and given a beating. There is no rebuttal to this evidence and there is no reason as to why the evidence of the claimant should not be believed.

It appears that the management instead of producing the necessary evidence in the Court have been concentrating on writing formal letters. A copy of the letter purporting to have been written by the management on 31st July, 1967, and addressed to the Labour Officer-cum-Conciliation Officer was received in this Court under registered cover in which it is stated that the services of the claimants were never terminated and that the management were even then ready to take the claimant back into services. During the conciliation proceedings the management did not even bother to send their representative and make this offer. In case they had done so and taken the claimant back into service the necessity of this reference would not have arisen.

Since the management have not produced any evidence in this Court to prove that he claimant absented himself from duty with effect from 19th January, 1967 and the claimant has affirmed on oath that his services had been terminated. I find issue No. 7 also against the management and hold that the termination of the services of the claimant was not justified and in order and he is entitled to be reinstated with continuity of service and full back wages because there is no evidence that the claimant was gainfully employed during this period.

Dated the 26th January, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 275, dated 7th February, 1968.
Forwarded (4 copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.
Dated the 26th January, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 1513-3Lab.-68, 4670.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Prestley Duggal and Company India Ltd, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.
Reference No. 121 of 1967.

Between
The Workmen and the Management of M/s
Prestley Duggal and Company India Ltd.
Faridabad.

Present: Shri Chaman Lal, for the Workmen.
Nemo, for the Management.

AWARD

Shri Sulakhan Singh was in the service of M/s Prestley Duggal and Company India Ltd, Faridabad as a Carne Driver. His services were terminated. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication—vide Gazette Notification No. 548-SFII-Lab.-67, dated 2nd December, 1967:—

Whether the termination of services of Shri Sulakhan Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties. The workmen filed a statement of claim but no body appeared on behalf of the management although service had been effected on them by registered post. *Ex parte* evidence of the workmen has been recorded.

Shri Sulakhan Singh the workman has appeared as his own witness in support of his case. He has stated that he joined the respondent concern on 20th February, 1966 as a Carne Driver at Rs. 150 per mensem. He says that he went on leave up to 20th Febroary, 1967 and when he returned he found that he had been marked absent. He says that he was wrongly charge-sheeted and without holding any proper enquiry, his services were terminated. Since the management has not even cared to attend this Court and lead evidence in rebuttal, I see no reason to disbelieve the sworn testimony of the workman. It is proved by this

evidence that the termination of his services was not justified and in order. He is entitled to be re-instated with continuity of services and full back wages.

Dated 8th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 286, dated 9th February, 1968

Forwarded (four copies, to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

Dated 8th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

The 23rd/24th February, 1968.

No. 1496-3Lab.-68/4672.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Kalkaji Compressor Works, Mathura Road, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 97 of 1967

between

The workmen and the management of M/s. Kalkaji Compressor Works, Mathura Road, Faridabad.

Present: Shri G. C. Joshi, for the workmen.
Dr. Anand Parkash, for the management.

AWARD

Shri Babu Khan was in the service of M/s Kalkaji Compressor Works, Mathura Road, Faridabad. He proceeded to Pakistan on one month's leave from 20th July, 1965. The case of the workman is that while in Pakistan he fell ill on 17th August, 1965, and was under the treatment of a Doctor. He sent an application for extension of leave up to 9th September, 1965, but in the meantime the war with India broke out and all means of communications with India were suspended and the Government of Pakistan also withheld his passport. The workman says that on 25th November, 1965, he got the permission of the Pakistan Government to return to India, he reached Bombay on 29th November, 1965, and reported for duty at Faridabad on 2nd December, 1965. The management refused to put him on duty on the grounds that his name had been struck off from the rolls on 1st December, 1965. The workman is aggrieved by reasons of the termination of his services and raised an industrial dispute. The Government of Haryana, in exercise of the powers conferred by clause (C) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication.

Whether the action of the management in terminating the services of Shri Babu Khan was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference, usual notices were issued to the parties, the workman filed a statement of claim and the management filed their rejoinder to the same. A number of preliminary objection have been raised on behalf of the management in their written statement filed later. It is pleaded that the reference of the matter now referred for adjudication was pre-

viously rejected by an order of the Government No. SF-III-Lab.-I-66/1856, after examining all aspects of the matter and the Government in their order of reference have given no reason for reopening the matter and making the reference for adjudication. It is also alleged that no notice was given by the Government to the management that they intended to review their earlier decision. The order of reference is said to be invalid and *ultravires* of the power of the Government for these reasons. A further objection has been taken that the demand notice of the basis of which the present reference has been made was given under section 2-A of the Industrial Disputes Act under which the case of the individual although not backed by the rest of the workmen or a union can be referred for adjudication as if it is an industrial dispute, but in the order of reference it is mentioned that there is an industrial dispute between the management and the workman. It is, therefore, pleaded that the order of reference proceeds on a completely wrong assumption and it is invalid on this ground also. An objection has also been taken that section 2-A of the Industrial Disputes Act is, *ultravires* of the power of the Central Legislature but the learned representative of the management did not press that an issue be framed on this point because it was conceded that this objection could not be raised in this Court. On merits, it was maintained that the management was justified in terminating the services of the claimant Shri Babu Khan. The pleadings of the parties gave rise to the following issues:—

- (1) Whether the order of reference is invalid, *ultravires* of the powers of Government on the ground that the reference was previously rejected by the Government and no reason have been given for now reference the matter for adjudication.
- (2) Whether the reference is invalid on the ground that it is an individual case and there is no dispute between the workmen and the management.
- (3) Whether the management is not competent to raise any preliminary objection because no such objection was raised in the written statement dated 27th November, 1967.
- (4) Whether the action of the management in terminating the services of Shri Babu Khan was justified and in order? If not to what relief is he entitled?

Issues Nos. 1, 2 and 3 have been treated as preliminary issues because they are all legal and the learned representative of the management submitted that the reference could be disposed off on issue No. 1 alone. I have heard the learned representative of the parties on the preliminary issues and my findings are as under:—

Issue No. 3—

It is submitted that on behalf of the workman that the management was not competent to file any supplementary written statement in which a number of preliminary objection have been raised on the grounds that these objections were not taken in the rejoinder dated 27th November, 1967. Technically the learned representative of the workman is correct but since the objections raised in the supplementary written statement are purely legal and go to the very root of the case, the management was permitted to raise the objections in question. I, therefore, find this issue in favour of the management.

Issue No. 1—

The learned representative of the management has submitted that the Government had previously refused to refer this dispute for adjudication, therefore, the Government was not competent to re-open the matter and refer the same dispute to this Court for adjudication. In support of this submission reliance has been placed upon the authority of our own High Court which is reported in A.I.R., 1966, Punjab 354. In this case also the services of a workman were terminated and the reference of the dispute for adjudication was refused on the ground that the cause of the aggrieved workman was not espoused by a substantial number of workmen. Thereafter, the union submitted the affidavits of some persons and the verification of the genuineness of those affidavits was in progress when the Punjab Government revised their earlier decision and referred the dispute for adjudication. The management filed a writ petition to declare the second reference having been made without jurisdiction. Hon'ble Mr. Justice Narula accepted the plea of the management and held that the Government had no jurisdiction to make the second reference. The following observations of the Hon'ble Judge conclude the matter so far as this Court is concerned.

"Considering the claims, objects and purposes of relevant provisions of the Act (Industrial Disputes Act) as a whole it appears to be clear that the words 'at any time' in section 10(1) of the Act refer to a period which commences on the issue of demand notice or with any other legal steps by which the proceedings are initiated for making a reference to the Labour Court or Tribunal and which period terminates with an order of the appropriate Government either making an reference or declining to make it for any valid reason. Once the Government has arrived at and given out its decision one way or the other, section 10(1) of the Act ceases to exist for that particular dispute or demand and with such a decision of the Government the words 'at any time' contained in section 10(1) of the Act also cease to operate."

The learned representative of the workman has tried to distinguish this authority on the ground that in this case the reference was originally refused on the ground that the cause of the aggrieved workman was not espoused by an substantial number of workmen or a union. Section 2-A of the Industrial Disputes Act had not been enacted till then. It is submitted that the affidavits which were submitted on behalf of the workmen later on could not be taken into consideration because the cause of the workman was not espoused by a substantial number of workman before the notice of demand was submitted, and this defect could not be cured later on and, therefore, the Government was not competent to re-open the matter and make a reference of the dispute for adjudication on the strength of the affidavits submitted afterwards. It is submitted that the facts of the present case are entirely different. In this case the Government had previously refused to refer the dispute for adjudication on the ground that there was no proof that the workman had given an application for extension of leave. This means that the union which then took up the cause of the workman did not place full material before the Government and the Government did not consider it proper to make the reference but when the Government was satisfied that the workman had in fact submitted

an application for extension of leave they were fully justified to re-consider the matter and make the reference. It is submitted that Hon'ble Mr. Justice Narula in the authority cited above has been placed to observe as under:—

"One of the main objects of the industrial legislation in the country is to secure industrial peace. If no finality were to attach to the decision of the Government and if it were left upon to the appropriate Government to go to and from its own order without any fresh material being brought before it, the same would certainly be inconsistent with the rule of law enshrined in article 14 of the constitution."

It is submitted that it is clear from the above observations that the Government is not debarred from re-opening the matter if fresh material is placed before them as has been done in the present case.

I have carefully considered the submissions of the learned representative of the workman and in my opinion it is not possible to agree with him that the Government was competent to re-open the matter because fresh material had been placed before them. Hon'ble Mr. Justice Narula in the authority cited above has been placed to interpret the words "at any time" occurring in sub-section (1) of section 10 of the Industrial Disputes Act and has observed that the words in question refer to a period which commences with the issue of demand notice and terminates with an order of the appropriate Government either making a reference or declining to make it for any valid reason. This means that if the Government once refers the dispute for adjudication or declines to do so for any valid reason then the matter can not be reopened. The learned representative of the workman has not urged that the original order of the Government declining to make the reference on the material which was then before them was mala fide or was not valid for any other reason. Hence in view of the authority of Hon'ble Mr. Justice Narula, it must be held that the order of reference in the present case is not valid. I find issue No. 1 also in favour of the management.

Issue No. 2—

The expression "industrial dispute" has been defined in clause (k) of section 2 of the Industrial Dispute Act. It means any dispute or difference between the employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person." Under section 2-A of the said Act an individual workman can raise an industrial dispute if he is aggrieved by reason of the termination of his services even if no other workmen or any union of workman is a party of the dispute. This means that the dispute between an individual workman and the management if it relates to the termination of his services is now deemed to be an industrial dispute which would under the definition of the industrial dispute as given in the Industrial Disputes Act would be deemed to mean a dispute between the employers and the workmen. The order of reference cannot, therefore, said to be invalid merely because it is recited therein that the dispute is between the management and the workmen. I find this issue in favour of the workman.

In view of my decision on issue No. 1, the reference of the dispute to this Court for adjudication is held to be invalid.

No order to costs.

Dated 7th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 277, dated 9th February, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

Dated 7th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

The 23rd February, 1968.

No. 1478-3Lab-68/4676.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Ram Sarup Dhani Ram, Industrial Area, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK
Reference No. 94 of 1967.

Between

The workman Shri Jai Ram and the management of M/s. Ram Sarup Dhani Ram, Industrial Area, Faridabad.

Present.—Shri Roshan Lal Sharma, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Jai Ram was in the employment of M/s Ram Sarup Dhani Ram, Industrial Area, Faridabad. He states that his services have been terminated without any prior notice or giving him any charge-sheet. This gave rise to an Industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this court for adjudication.—vide Gazette Notification No. 449-SF-III-lab-67, dated 25th September, 1967.

Whether the termination of services of Shri Jai Ram was justified and in order ? If not, to what relief is he entitled ?

After the receipt of the reference usual notices were issued to the parties in response to which the workman filed a claim statement and the management filed their rejoinder to the same. On behalf of the management it is stated that the terms of reference are vague and this court has no jurisdiction because the subject matter of dispute does not fall in the second schedule of the Industrial Disputes Act, 1947. It is also pleaded that the Government have failed to display their opinion as to how and in what manner they have come to the conclusion that an industrial dispute exists between the workman and the management because at the most it is an individual dispute. An objection has also been raised that the reference is proper and legal because it purports to have been made on the basis of a demand notice served by the General Labour Union which is not the Union of any particular industry, because this union enrols members anywhere and every where and it is not an organisation in the true sense of the term. It is pleaded

that the General Labour Union has no locus standi in the respondent concern and the claimant is not a member of this union. It is pleaded that the General Labour Union is not a registered union. The reference is said to be premature because the service of the claimant have not been terminated by the management so far. It is alleged that the claimant was laid off for 3 days on 20th July, 1967. He did not rejoin on the false plea that the Proprietor of the respondent factory wanted him that he should carry him (proprietor) on his cycle but he expressed his inability to do so. He further tended that he was sick from 23rd July, 1967 and on that pretext also he did not rejoin his duty. It is alleged that the management waited for two or three days and after 27th July, 1967, a letter was sent to him under postal certificate at his home address but he did not care to report for duty and served a demand notice through the General Labour Union in which it was wrongly stated that he had been illegally dismissed from 20th July, 1967. It is alleged that the management attended the conciliation proceedings and it was made clear that the claimant Shri Jai Ram had not been dismissed and he could come and rejoin the duties and on 10th July, 1967, a letter under registered cover was again sent to him asking him to come and join duties and explain as to why he had remained absent and submit a medical certificate in case he was ill but he did not turn up. It is alleged that the claimant is still at liberty to come and join his duties but that he will have to satisfy the management as to why he remained absent.

The pleadings of the parties gave rise to the following issues:—

- (1) Whether the reference is invalid and liable to be rejected for the reasons mentioned in the preliminary objections ?
- (2) Whether the services of the claimant have been terminated on 20th July, 1967 ?
- (3) Whether the claimant has absented from his duty with effect from 24th July, 1967 without giving any justification for his absence ?
- (4) If issue No. 2 is found in favour of the claimant and issue No. 3 is found against the management whether the termination of services of the claimant is justified and in order ?

If not to what relief is he entitled ?

I have gone through the evidence produced by the parties and have heard their learned representatives. My findings are as under:—

Issue No. 1.—No evidence has been led to prove that the General Labour Union is not a registered union or its registration has been cancelled. The claimant Shri Jai Ram has stated that he is a member of the Union which is representing him in this case from the last four years. His case is that his services have been terminated without giving him any charge-sheet. On these allegations he is competent to raise an industrial dispute under section 2A of the Industrial Disputes Act, 1947, and this case would fall under item No. 3 of the Second Schedule of the Industrial Disputes Act. So this court has jurisdiction. No authority has been cited in support of the contention that it is incumbent upon the Government to state in the order of reference as to how and in what manner they have come to the conclusion that an industrial dispute exists. The order of

reference cannot be said to be vague or invalid for any of the reasons mentioned by the management in their preliminary objections. The question as to whether the services of the claimant have so far been terminated or not is to be decided while discussing Issues Nos. 2 and 3. In case the services of the claimant have not been terminated so far then obviously the reference is premature. With these remarks I decide issue No. 1 in favour of the applicant.

Issues Nos. 2, 3 and 4.—Shri Dhani Ram, Proprietor of the respondent firm has appeared as his own witness and has stated that the claimant Shri Jai Ram was laid off for three days from 20th July, 1967 and after the expiry of the period of lay off he did not report for duty and so he is being marked absent but his services have not been terminated so far he says that a letter copy of which is Ex. M. 3 was sent to the claimant on 27th July, 1967 under postal certificate and Ex. M. 4 is the postal certificate and when the claimant did not appear even then, a letter copy Ex. M. 5 was sent to him under registered cover and Ex. M. 6 is the postal receipt. The witness also produced his despatch register and proved an entry Ex. M. 7 from this register regarding the despatch of the letter mentioned above. He says that during the conciliation proceedings also he took up the plea that the services of the claimant had not been terminated so far. The claimant in his evidence admits the receipt of the letter under registered cover and says that he did not consider it necessary to give any reply to this letter because the conciliation proceedings had started. The claimant does not contradict the assertion of the management that even during the conciliation proceedings it was made clear to him that his services had not been terminated so far and he was at liberty to come and rejoin his duties. Under these circumstances it can not be said that the services of the claimant have been terminated.

The question which has been referred to this Court for adjudication is whether the termination of the services of Shri Jai Ram was justified and in order? If not to what relief is he entitled? Thus it is not possible for this court to express any opinion in these proceedings on the question whether after the lay off the claimant absented himself from work or whether the management refused to allow him to resume duties. It is clear that the claimant continues to be in the services of the respondent company till his services are formally terminated. Since according to the pleadings and the evidence led in this court it is not the case of the management that the services of the claimant have been terminated so the question whether the termination of the services of the claimant is justified or not does not arise and it must be held that reference is premature and for this reason the claimant is not entitled any relief in these proceedings. As I am not giving any decision on merits of the case the parties are left to bear their own costs.

Dated, the 9th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 298, dated the 13th February, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment

Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.
Dated, the 9th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 1473-3Lab-68/4680.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and management of M/s Haryana Co-operative Transport Society Ltd., Kaithal.
BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 24 of 1965.

Between

The workman Shri Lakhpat Rai and the management of M/s Haryana Co-operative Transport Society Ltd., Kaithal.

Present:—The claimant Shri Lakhpat Rai with Shri Harbans Lal and Shri Ravi Nanda, Shri Ram Lal Chaudhary for the management.

AWARD.

The claimant Shri Lakhpat Rai was employed as Cashier in Haryana Co-operative Transport Society Ltd. Kaithal. His services were terminated on 25-7-65 because he refused to furnish a cash security of Rs. 2,000 and tangible security were Rs. 3,000 as demanded by the management. This gave rise to an industrial dispute and the Government of Punjab in exercise of the powers conferred by clause (e) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—vide Gazette Notification No. 706-SF-3-Lab-1-65, dated 10th November, 1965.

Whether the termination of services of Shri Lakhpat Rai, Cashier, is justified and in order? If not, to what relief he is entitled to?

During the pendency of reference the service of Shri Piara Singh who was employed as a Driver in the respondent society was also terminated and an industrial dispute was also raised by reason of his termination of the services. While questioning the propriety of the order of the management terminating the services of Shri Piara Singh, an objection was also raised that the Board of Directors had no locus standi to demand a security of Rs. 2,000 in cash and Rs. 3,000 as tangible security from Shri Lakhpat Rai, Cashier and there was no such rule and regulation applicable to the Haryana Co-operative Transport Society Ltd., Kaithal or societies of the same status and therefore the order demanding the security was illegal. The Government of Punjab also referred the following two disputes for adjudication to this court.—vide Gazette Notification No. 149-SF-3-Lab-1-65, dated the 4th March, 1966.

- (1) Whether the termination of services of Shri Piara Singh, driver is justified and in order? If not, to what relief he is entitled to?
- (2) Whether the action of the management in demanding security of Rs. 5,000 from Shri Lakhpat Rai, Cashier is justified and in order? If not to what relief the workman is entitled to?

This reference has been numbered as No. 7 of 1966. We have already seen that the services of Shri Lakhpur Rai, Cashier were terminated by the management simply on the ground that he had failed to deposit the requisite security and thus the subject matter of the dispute which has been referred to this court.—*vide* Gazette Notification No. 706-SF-3-Lab-1-65; dated 10th November, 1965 is the same as the second item of the dispute referred to this court.—*vide* Gazette Notification No. 149-SF-3-Lab-1-65, dated 4th March, 1966 and only one decision is possible. The representatives of the parties therefore, made a statement on 18th April, 1966 in the file relating to reference No. 7 of 1966 that the second item of the dispute referred to this court be also decided along with the dispute which is the subject matter of reference No. 24 of 1965.

It is not necessary to go into the merits of the case because the parties have amicably settled their dispute. The claimant Shri Lakhpur Rai no longer questions the right of the management to demand security from the person who is employed as a Cashier. He also does not insist that he be reinstated to the post of cashier. The management have agreed to take the claimant back into service and post him as a Checker with continuity of service. The claimant has agreed not to demand back wages and the management in turn have agreed not to demand back from him any amount which he has already received. The statement of the parties have been recorded embodying these terms of settlement. The claimant will be taken back into service within 15 days from the date the award become enforceable, and I give my award accordingly. No order as to costs.

Dated. 12th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 290, dated the 12th February, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated. 12th February, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 1489-3Lab-68/4674.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Goela Engineering and Woollen Works, Panipat :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER LABOUR COURT, ROHTAK.

Reference No. 74 of 1967.

Between

THE WORKMEN AND THE MANAGEMENT
OF M/S GOELA ENGINEERING AND WOOL-
LEN WORKS, PANIPAT.

Present.—Shri Raghbir Singh, for the workmen.

Shri R. L. Gupta, for the management.

AWARD

Shri Anant Ram was employed by M/s Goela Engineering and Woollen Works, Panipat on 1st September, 1966. His services were terminated with effect from 10th May, 1967, without giving him any

prior notice or charge-sheet. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. 339-3FIII-Lab-67/dated 24th August, 1967.

Whether the action of the management in terminating the services of Shri Anant Ram is justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference, usual notices were issued to the parties. The claimant Shri Anant Ram, filed his statement of claim and the management filed their written statement. The pleadings of the parties gave rise to the following issues :—

- (1) Whether the reference is not valid for the reasons mentioned in the preliminary objections ?
- (2) Whether the claimant was a temporary employee and his services have been terminated on the ground that his work was not satisfactory as per terms of his appointment letter ?
- (3) Whether the claimant has been victimised on account of his trade union activities ?
- (4) If the termination of the services of the claimant is held to be unjustified to what relief is he entitled ?

Issue No. 1.

The order of reference is said to be bad on the ground that :—

- (1) It is an individual dispute between a workman and the management whereas the Government has termed it as a collective dispute between the workmen and the management.
- (2) The reference has been made at the instance of the workmen Shri Anant Ram, who maintained that his dismissal was not justified and, therefore, the onus lay upon him to prove that his dismissal was not justified but the Government in the order of reference as framed has put the onus on the management to prove that the termination of the services of Anant Ram was justified and the Government had no power to change the issue and put the burden of proof on the management.

There is no substance in any of those objections. The expression "Industrial Dispute" has been defined in clause (K) of section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as an Act) and it means any dispute or differences between the Employers and Employers or between Employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Under section 2-A of the Act a workman whose service have been terminated is now competent to raise an industrial dispute if he is aggrieved by reason of the termination of his service and under section 10(1) of the Act, the Government is competent to refer this dispute for adjudication to the Labour Court. As regards the question of onus, it is

for the management to satisfy the Court in the first instance that their action terminating the services of the workmen was justified and in order and therefore the reference cannot be said to be invalid because the onus has been put on the management. I am, therefore, of the opinion that there is no force in the preliminary objections raised by the management.

Issue No. 2.

The management has proved the letter of appointment, dated 31st August, 1966 marked Ex. M.W. 1/1 by means of which the claimant Shri Anant Ram was appointed in the Carding and Spinning Department of the respondent concern on probation for the year. It is alleged that his work was not found satisfactory and so his services were terminated as per terms of his appointment and the allegation that he was victimised because he had joined the union was not correct. The version of the management is that previously the claimant had been working on a Muel Machine and had no experience of working on ring frame machine and he had assured that he would learn the work and so he was appointed on probation but the work was not found satisfactory. It is alleged that his Supervisor complained a number of times that the claimant could not satisfactorily work on a ring frame machine and the three reports alleged to have been submitted by the Supervisor and marked Ex. M.W. 2/1, M.W. 2/2, M.W. 2/3 have been proved. It is alleged that the claimant was warned verbally a number of times but he did not improve his work and so his services were terminated by means of letter Ex. M.W. 2/4.

The version of the claimant on the other hand is that he had no experience working on a ring frame machine and he had been working on such a machine in Haryana Woollen and General Mills from 1962 to 1964. He says that he is illiterate and that he was not given any letter appointing him on probation for one year and his services have been terminated simply because of his trade union activities.

The learned representative of the management has submitted that there is no evidence to prove that the action of the management terminating the services of the claimant was not bona fide. It is alleged that the management were in a need of spinner and no trained spinner was available so a chance was given to the claimant to learn the work and for this reason he was appointed on probation for one year but the claimant did not pick up the work and so his services had to be terminated. It is submitted that the management is the sole judge to decide whether the work of their employees is satisfactory or not and their decision can not be questioned in the Court unless there is some evidence to show that the management has not acted as bona fide.

I have carefully considered the evidence produced by the management and in my opinion it is not satisfactorily proved that the action of the management terminating the services of the claimant was bona fide even

if it is held that the claimant was appointed on probation for one year. It is alleged that the Supervisor made as many as there written complaints, that the work of the claimant was not satisfactory but it is surprising that not even written warning was administered to the claimant. The Supervisor in his complaint dated 28th March, 1967 marked Ex. M.W. 2/1 had alleged that the work of the claimant was not satisfactory because on whatever machine he was put on duty the production of that machine come down. No evidence has been led to prove on what date and on what machine the claimant was put on duty, what was the production from that machine before the claimant was put on duty and to what extent the production of that machine fell during the period the claimant worked on that machine. The learned representative of the management conceded during the course of arguments that the management do maintain a record of the production of each machine. It is, therefore, obvious that the allegation made against the workmen that his work was not satisfactory because his production was not up to the mark has not been substantiated and, therefore, there is no material on the record on the basis of which it can be held that the action of the management terminating the services of the claimant was bona fide. I am, therefore, of the opinion that the termination of the services of the claimant was not justified and in order.

Issue No. 3.

There is no satisfactory evidence of victimisation. The claimant maintains that his services were terminated because he had formed a union and a demand was made for fixing minimum wages. The claimant admits in cross examination that he did not even know the name of the union which he formed. He further admits that the union existed from the last many years. There is no evidence that the claimant did any thing which annoyed the management particularly. Hence it can not be said that the claimant have been victimised on account of his trade union activities.

Issue No. 4

In view of my decision on issue No. 2 that the termination of services of the claimant was not justified, he is entitled to be reinstated with continuity of services and full back wages.

No order as to costs.

Dated 22nd January, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 278, dated 9th February, 1968.

This award (in 4 copies) is forwarded to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 22nd January, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.